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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,975	12/15/2003	Nils Zander	TRAUMA 3.0-449	4263
530 7590 12/16/2008 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090				
EXAMINER RAMANA, ANURADHA				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
12/16/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/735,975

**Applicant(s)**

ZANDER ET AL.

**Examiner**

Anu Ramana

**Art Unit**

3775

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1.4.11.15.16.18-22.25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4.22.25 and 26 is/are allowed.
- 6) ☒ Claim(s) 1.3.11.15.16 and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 16 and 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the recitation in lines 13-16 renders the claim vague and indefinite since it is unclear whether the "second end" being referred to is the second end of the sleeve.

In claim 16, the recitations in lines 17-18, namely, "the screw head" and "including a head" renders the claim vague and indefinite since it is unclear whether the second recitation of "a head" is referring to the first recitation or is a separate head.

Appropriate correction is required.

Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Bramlet et al. (6,648,889).

Bramlet et al. disclose a locking nail 1 including: at least one cross bore extending along an axis transverse to a longitudinal axis of the shank; a headed locking screw 6; and a biasing sleeve 3 with a radial flange or edge or rim against which the head of locking screw 6 comes to bear (Figs. 13-15, col. 7, lines 19-67, col. 8 and col. 9, lines 1-51). It is noted that sleeve 3 is capable of axially deforming due to the presence of slots 9.

Regarding claim 3, Bramlet et al. disclose locking screw to engage with "a thread of a cross bore," namely, the internal threaded portion of lag screw 4.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sutter et al. (US 4,388,921) in view of Mortensen (US 3,942,407).

Sutter et al. disclose an implant having a long narrow part or shank 7c; a bone screw 9 with a head 9b; and a biasing element or sleeve or washer 11 wherein the biasing element is received in a bore of the implant and the screw head engages a first end of the biasing element (Fig. 2, col. 4, lines 18-68 and col. 5, lines 1-24).

Sutter et al. disclose all elements of the claimed invention except for a washer having slots that extend through an angle more than 180 degrees.

Mortensen teaches a type of screw anchoring device or sleeve having slots or slits that are axial, helical or inclined with respect to the longitudinal axis of the sleeve for a tighter engagement to prevent unscrewing of the screw (Figs. 11 and 12, col. 2, lines 14-68, col. 3 and col. 4, lines 1-22).

The substitution of one known type of washer (as taught by Mortensen) for another known washer (as disclosed by Sutter et al.) would have been obvious to one of ordinary skill in the art at the time the invention was made since this amounts to simple substitution of one known type of washer for another and would have yielded predictable results, namely, positive engagement of the prosthesis with underlying bone.

Regarding the limitations, "an angle more than 180 degrees" and "offset by about 90 degrees," it would have been a matter of obvious design choice to a person of ordinary skill in the art to provide slots inclined and offset at the stated

angles because Applicant has not disclosed that providing these angles provides an advantage. It would have been prima facie obvious to modify the device of the combination of Sutter et al. and Mortensen to obtain the claimed invention because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art Sutter et al. and Mortensen.

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

Claims 4, 22, 25, and 26 are allowed.

Claims 16 and 18-21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached on Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR

December 12, 2008

/Anu Ramana/

Primary Examiner, Art Unit 3775